

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4408 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

K. C. BHATTI

Versus

STATE OF GUJARAT

Appearance:

MR SB NANAVATI for Petitioner

MR ND GOHIL for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/09/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner, an employee of the Police Department, State of Gujarat, filed this petition before this Court in the matter of order which has been made in the disciplinary proceedings and for further relief of giving him pension and gratuity and other retirementary benefits.

2. The petitioner was served with a chargesheet in

connection with serious misconduct. The misconduct alleged against the petitioner was that he has taken Rs.50/- from the truck drivers. On the basis of preliminary inquiry held by the Anti Corruption Bureau, Nadiad, the petitioner was served with a chargesheet. The petitioner was called upon to show cause as to why he should not be removed from the services. Thereafter the petitioner was ordered to be removed from the services under the order of D.I.G., C.I.D. (I.B.), Ahmedabad, dated 29th May 1971. The petitioner at this stage, has approached to this Court by filing Special Civil Application No.323 of 1975. This Special Civil Application has been disposed of by this Court on 3.5.78 and the matter has been remanded back to the appellate authority for fresh decision in accordance with law and observations made in the judgment. On remand, the appellate authority passed an order dated 18th September 1979, under which instead of removal from services, penalty of compulsory retirement has been substituted. The petitioner filed revision application against the said order before the Government, but that too has been dismissed. Hence this Special Civil Application.

3. The learned counsel for the petitioner has given out all the contentions which have been raised in the Special Civil Application challenging thereunder the order of penalty. But the challenge has been restricted only to the orders of respondent wherein they have refused to give him pension and gratuity. The learned counsel for the petitioner contended that even if the punishment of compulsory retirement remains, then too as per the Government circulars, the case of the petitioner should have been considered objectively to grant him invalid pension and special additional pension. Reliance has been placed by the counsel for the petitioner to the Circular of the Government dated 4th February 1976 and 4th December 1982. The counsel for the petitioner contended that the case of the petitioner for grant of compensate pension/invalid pension or special additional pension has not been considered in the light of aforesaid two Circulars. Otherwise there was no question of denying of the same. Though the respondents have made earlier orders in connection with the claim of the petitioner for compensate/invalid pension, but these matters are not res-judicata and it is always open for consideration by the respondents in case the petitioner has made out a case on the basis of some Circulars of the Government itself.

4. From the impugned order, in connection with the pension and other retirementary benefits of the

petitioner, I am satisfied that there is no reference of the aforesaid two Circulars of the Government. These two Circulars, are on the subject for grant of compensate or invalid pension to the employees who have been retired from services for misconduct. The learned counsel for the petitioner contended that both the petitioner and his wife are old persons and they are bed ridden as suffering from serious ailments. This fact has no relevance whatsoever on the question of entitlement of petitioner for grant of compensate or invalid pension. It cannot be granted on mercy or some other difficulties or on account of some ailment. The case has to be considered objectively with reference to the misconduct and other circumstances.

5. In the facts and circumstances of the case, interest of justice will be served in case this writ petition is disposed of with directions to the respondents to consider the case of the petitioner for grant of compensate/invalid pension afresh in the light of Circulars reference of which has been made in the earlier part of this judgment. Taking into consideration the fact that the petitioner is an old man, it is hereby directed that the respondents shall consider the case of the petitioner for grant of compensate/invalid pension with a period of three months from the date of receipt of certified copy of this order. In case the petitioner is found to be entitled for pension, the arrears of the same and other benefits shall be paid to him with a period of one month thereafter. In case the petitioner is not found entitled for aforesaid benefits, the respondents shall make a reasoned order and a copy of the same may be sent to the petitioner by registered post.

6. In the result, this Special Civil Application is disposed of with aforesaid directions. Rule made absolute in aforesaid terms with no order as to costs.

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(sunil)